IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION No.23470 OF 1996

Between:

Alladi Madhav Rao

..... PETITIONER

AND

Mandal Revenue Officer,
Sultanabad, Sultanabad M.R.,
Karimnagar Dist.

....RESPONDENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION No.23470 OF 1996

O R D E R

This writ petition is filed with a prayer as follows:

> **" … Hon'ble Court may be pleased to issue a writ or direction more particularly in the nature of Writ of Mandamus directing the respondent not to interfere in peaceful possession and enjoyment of petitioner in an area of 1 acre 20 guntas in Sy.No.270 of Kadampur village, M.R.Sultanabad, Karimnagar Dist., by permitting the petitioner to cut away the paddy crops raised by him in the said land by staying the dispossession of the petitioner from the said land by declaring the action of respondent as arbitrary and violative of principles of natural justice pass such other …"**

The petitioner claims that his father purchased an extent of Ac.1-20 guntas situated in Sy.No.270 in Kadambapoor village, M.R.Sultanabad, Karimnagar District about 45 years ago. The grievance of the petitioner is that the respondent herein orally instructed the village assistant of Kadambapoor village to cut the paddy crops standing in the abovementioned land and the same was informed to the petitioner. Hence, the present writ petition.

The petitioner claims that he and his father are in continuous possession and enjoyment of the disputed piece of land.

None appears for the respondent.

The respondent filed the counter-affidavit. In the counter-affidavit, it is asserted that the land in dispute is occupied by the petitioner unauthorisedly and it is a shikam poramboke land. It is further asserted that the petitioner

illegally encroached the land, and thereafter, a notice was issued on 09.08.1994 under Section 7 of A.P. Land Encorachment Act, 1905 seeking to evict the petitioner from the land, but the petitioner has not replied to the notice. Since the petitioner did not respond to the abovementioned notice, proceedings dated 07.09.1995 have been issued to evict the petitioner from the land in dispute. It is further asserted in the counter-affidavit that the possession was in fact taken on 18.11.1995.

The assertion of the petitioner that the land in question has been in possession of the petitioner and the predecessors-in-title for about 35 years prior to the date of filing of the writ petition and is now about 45 years, is not specifically denied in the counter-affidavit by the respondent.

In the circumstances, the allegation that the petitioner is in possession stands unrebutted. Even assuming that the petitioner or his predecessor-in-title is an encroacher, it is well settled law that they cannot be evicted by resorting to summary proceedings under the Land Encroachment Act. A Division Bench of this Court in a decision reported in THE SPECIAL DEPUTY COLLECTOR, LAND EVICTION, HYDERABAD V/s.KONDA LAKSHMAN BAPUJI[1] categorically held as follows:

> **"… The occupation of the property by the writ petitioners being open and for an appreciable length of time as observed by the Supreme Court can be taken prima facie to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law. Since there is a bona fide dispute of title between the Government and the writ petitioners it must be adjudicated upon by the ordinary courts of law. …"**

In the circumstances, the writ petition is allowed. In view of the assertion of the respondent that they have already taken possession of the property, I deem it appropriate to direct the respondent to put the petitioner back in possession of the property. There shall be no order as to costs.

JUSTICE J.CHELAMESWAR

4TH APRIL, 2007
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR

WRIT PETITION No.23470 OF 1996

04th APRIL, 2007

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[1] 1984(1) APLJ 219